STATE OF MICHIGAN

COURT OF APPEALS

ALEXANDRA NATHALIE BEDFORD, Plaintiff-Appellant, v STANCATI & ASSOCIATES, P.C., ROSS F. STANCATI and MICHELLE A. McINTYRE, Defendants-Appellees.	UNPUBLISHED December 19, 2013 No. 312692 Kalamazoo Circuit Court LC No. 2011-000046-NM

Before: WHITBECK, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Plaintiff, Alexandra Nathalie Bedford, appeals as of right the trial court's order granting summary disposition in favor of defendants, Stancati & Associates, PC, Ross F. Stancati, and Michelle A. McIntyre (collectively, the law firm) under MCR 2.116(C)(10) on her claims of legal malpractice. We affirm.

I. FACTS

A. THE DIVORCE PROCEEDING

Bedford filed a divorce complaint on October 11, 2007. Bedford ultimately retained the law firm to represent her in the divorce and related litigation. As the result of a divorce settlement, the trial court entered a final judgment of divorce on December 20, 2008.

B. BEDFORD'S MALPRACTICE CLAIM

On January 28, 2011, Bedford filed a complaint for legal malpractice against the law firm, alleging that it had negligently represented her in the divorce and during post-settlement proceedings. On June 13, 2012, the law firm filed a motion for summary disposition under MCR 2.116(C)(7), (8), and (10), asserting in part that Bedford's claims were unenforceable as a matter of law and that no factual development could justify recovery.

C. THE TRIAL COURT'S RULING

After hearing arguments on the motion, the judge issued a ruling from the bench. The judge began his detailed ruling with the following statement:

> This Court has been involved with these parties for an extended period of time, well beyond this litigation as a matter of fact. In fact, I guess perhaps . . . even beyond the Family Court proceeding that is the basis for this action.
>
> I am intrigued in some ways because if this were merely—if this was the first time this Court were exposed to the princip[al]s in this case, the Court, I think would have a substantially different view of the good faith of either of the principal litigants in the underlying divorce matter as well as the ancillary actions that have gone on both before and since the case leading to this particular case.

The judge then granted the law firm's motion for summary disposition on the basis that Bedford had abandoned several claims, had failed to assert legally enforceable claims, and that no factual development would justify a recovery.

II. JUDICIAL BIAS

A. STANDARD OF REVIEW AND ISSUE PRESERVATION

Generally, when this Court reviews issues of judicial disqualification, we review the trial court's findings of fact for an abuse of discretion and review de novo issues of law.[1] However, to preserve an issue of judicial bias, a party must raise the claim before the trial court.[2] Here, Bedford did not raise her claim of judicial bias before the trial court. Therefore, Bedford did not preserve this issue.

We review unpreserved claims of judicial bias for plain error affecting a party's substantial rights.[3] An error is plain if it is clear or obvious.[4] An error affects a party's substantial rights if, absent the error, the result of the proceedings would have been different.[5]

B. LEGAL STANDARDS

"Due process requires that an unbiased and impartial decision-maker hear and decide a case."[6] A judge must be disqualified when he or she cannot hear a case impartially, including

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[1] *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596; 640 NW2d 321 (2001).

[2] *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011). See MCR 2.003(D).

[3] *Jackson*, 292 Mich App at 597; *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

[4] *Carines*, 460 Mich at 763.

[5] *Id.*

when a judge is biased or prejudiced against a party or when circumstances lead to the appearance of impropriety.[7] The party who alleges that a judge is biased must overcome the heavy presumption in favor of judicial impartiality.[8]

C. ACTUAL BIAS OR PREJUDICE

Bedford contends that the judge's comments reflected actual bias or prejudice against her because the judge stated that Bedford (1) filed her claims in bad faith and (2) was dishonest. We disagree.

This Court will not find bias simply because the judge ruled against a party.[9] A judicial ruling will only constitute actual bias if "the judicial opinion displays 'a deep-seated favoritism or antagonism that would make fair judgment impossible'[.]"[10]

A fair reading of the judge's statement does not clearly or obviously indicate his belief that Bedford did not file her malpractice claim in good faith or that she was dishonest. The statement clearly referred to the good faith of *both* the principal litigants. The judge's statement did not refer to Bedford's good-faith or lack thereof in filing a malpractice action, nor did it state that either Bedford or the law firm acted in bad faith. The judge's vague reference to the parties' conduct in the prior proceedings does not clearly demonstrate bias or prejudice toward one party. Thus, Bedford has not demonstrated that the judge's failure to disqualify himself from hearing the malpractice action constituted plain error.

However, even were we to accept Bedford's assertion that the judge indicated that Bedford filed her malpractice claim in bad faith and is dishonest, we would conclude that these statements do not reflect actual bias or prejudice. Judicial remarks ordinarily are not grounds for disqualification even if they are "critical of or hostile to counsel, the parties, or their cases[.]"[11] Bedford essentially asks us to conclude that the judge was biased because she does not like the implications of a judicial remark that is critical of a party. Here, the judge's comments may be, if we accept Bedford's assertions, merely critical of Bedford and do not display the type of deep-seated antagonism that would make fair judgment impossible.

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[6] *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012), lv den 491 Mich 940 (2012).

[7] MRE 2.003(C)(1)(a) and (b); *Cain v Dep't of Corrections*, 451 Mich 470, 494-496; 548 NW2d 210 (1996).

[8] *Cain*, 451 Mich at 497.

[9] *Bayati v Bayati*, 264 Mich App 595, 603; 691 NW2d 812 (2004); *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009).

[10] *Cain*, 451 Mich at 496, quoting *Liteky v United States*, 510 US 540, 555; 114 S Ct 1147; 127 L Ed 2d 474 (1994).

[11] *In re MKK*, 286 Mich App 546, 567; 781 NW2d 132 (2009).

Additionally, Bedford does not assert or prove that the judge's rulings on the motion were incorrect or that his supposed prejudice affected his rulings in any way. Thus, there is no indication that, had the trial judge disqualified himself, the result of the proceedings would have been different.

We conclude that Bedford has not shown that the judge's comments in this case constitute plain error affecting her substantial rights.

D. APPEARANCE OF BIAS

Bedford also contends that the trial judge's failure to disqualify himself led to the appearance of bias. We conclude that Bedford has abandoned this contention.

"The Due Process Clause requires an unbiased and impartial decisionmaker."[12] In the absence of actual bias, "disqualification is warranted when there are circumstances of such a nature as to cause doubt as to [the judge's] partiality, bias or prejudice."[13] However, in the absence of actual bias, disqualification is only required in the most extreme cases.[14] Circumstances that cause doubt about a judge's partiality include when (1) a judge has a pecuniary interest in the outcome, (2) the judge is a litigant, (3) one of the parties is the judge's client or a relative, (4) the judge is presiding over a contempt trial in which the judge was the victim of the contempt, or (5) the judge is "embroiled in a running controversy in the trial."[15]

Bedford asserts that a judge should have disqualified himself because his participation in the case led to the appearance of bias. However, Bedford does not allege *any* circumstances surrounding the judge's ruling that would lead to the appearance of bias. Parties abandon issues on appeal if they "merely announce their position and leave it to this Court to discover and rationalize a basis for their claims."[16] A party who does not support his or her assertions on appeal abandons them.[17] We conclude that Bedford has abandoned this issue.

E. APPEARANCE OF IMPROPRIETY

Bedford also contends that the trial judge's failure to disqualify himself led to the appearance of impropriety. We conclude that Bedford has also abandoned this contention.

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[12] *Cain*, 451 Mich at 497.

[13] *Ireland v Smith*, 214 Mich App 235, 250; 542 NW2d 344 (1995) (quotation marks, citation, and brackets omitted).

[14] *Id*. at 497-498.

[15] *People v Lowenstein*, 118 Mich App 475, 484-485; 325 NW2d 462 (1982)

[16] *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

[17] *Id*.

The appearance of impropriety exists when judicial conduct "would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."[18] Accordingly, a judge must disqualify him- or herself when the judge "has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct."[19] The Michigan Code of Judicial Conduct, Canon 2 provides that, among other things, the judge may not (1) engage in irresponsible or improper conduct, (2) fail to respect the law, (3) treat persons unfairly on the basis of race, gender, or other protected personal characteristics, or (4) allow family, social, or other relationships to influence judicial conduct.

We conclude that Bedford has abandoned her assertion that the judge should have recused himself on the basis of the appearance of impropriety. Bedford does not assert that the judge violated the Michigan Code of Judicial Conduct, Canon 2 in any way. As stated above, a party who does not support his or her assertions on appeal abandons them.[20] We conclude that Bedford has abandoned this issue.

III. CONCLUSION

We conclude that Bedford has failed to show that the judge's failure to disqualify himself on the basis of bias constituted plain error that affected her substantial rights. We conclude that Bedford has abandoned her claims that the judge's decision not to disqualify himself led to the appearance of bias and the appearance of impropriety.

We affirm.

/s/ William C. Whitbeck
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher

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[18] *Caperton v A T Massey Coal Co, Inc*, 556 US 868, 888; 129 S Ct 2252; 173 L Ed 2d 1208 (2009) (quotation marks and citation omitted).

[19] MCR 2.003(C)(1)(b)(*ii*).

[20] *VanderWerp*, 278 Mich App 633.